

§ 908.1 Board orders.

If the Board finds that a grievance is meritorious, the Board shall have the authority to direct the Agency:

(a) To correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(b) To reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(c) To retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(d) To reinstate the grievant, and to grant the grievant back pay, where it is established that the separation or suspension without pay of the employee was unjustified or unwarranted under the Back Pay Act (5 U.S.C. 5596(b)(1));

(e) To take any corrective action deemed appropriate by the Board provided it is not contrary to law or collective bargaining agreement.

[50 FR 31357, Aug. 2, 1985, as amended at 56 FR 55459, Oct. 28, 1991]

§ 908.2 Attorney fees.

(a) If the Board finds that a grievance is meritorious or that an Agency has not established the cause for separation of a charged employee in a hearing before the Board pursuant to section 610 of the Act, the Board shall have the authority to direct the Agency to pay reasonable attorney fees to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under 5 U.S.C. 7701(g).

(b) Requests for attorney fees, accompanied by supporting documentation, must be filed with the Board within thirty (30) days of the date of the Board's decision.

[56 FR 55459, Oct. 28, 1991]

§ 908.3 Board recommendations.

(a) If the Board finds that the grievance is meritorious and that remedial

action should be taken that relates directly to promotion, tenure, or assignment of the Grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence in a grievance proceeding warrants disciplinary action against any employee of an Agency, it shall make an appropriate recommendation to the head of the concerned Agency.

(b) The head of the Agency shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation and shall implement the recommendation of the Board except to the extent that the head of the Agency rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the head of the Agency rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Copies of the decision shall be served on the other parties. Pending the decision of the head of the Agency, there shall be no ex parte communication concerning the grievance between the head of the Agency and any person involved in the proceedings of the Board. The head of the Agency shall, however, have access to the entire Record of the Proceedings of the Board.

(c) A recommendation under this section shall, for the purposes of section 1110 of the Act, be considered a final action upon the expiration of a 30-day period referred to in paragraph (b) of this section, except to the extent that it is rejected by the head of the Agency by an appropriate written decision.

(d)(1) If the head of the Agency makes a written decision under paragraph (b) of this section rejecting a recommendation in whole or in part on the basis of a determination that implementing such recommendation would be contrary to law, the head of the Agency shall, within the 30-day period referred to in paragraph (b) of this section:

(i) Submit a copy of such decision to the Board; and